

**Before the  
Federal Communications Commission  
Washington, D.C.**

**In the Matter of:**

Application for Review of decisions	)	
of the Schools and Libraries Division	)	
of the Universal Service Administrative	)	
Company for Lonesome Pine Regional	)	Funding Request Numbers
Library Wise, Virginia	)	1446771
	)	
Joint Board on Universal Service	)	CC Docket No. 02-6

Request For Review  
Application For Review  
Lonesome Pine Regional Library  
Entity Number 126603  
Form 471 Number 518893  
Funding Request Number 1446771

In accordance with Sections 54.719 through 54.721 of the Commission's rules, now comes Lonesome Pine Regional Library (Lonesome Pine) before the Commission requesting review of action by the Schools and Libraries Division of the Universal Service Administrative Company (Administrator).

The Administrator denied funding for Lonesome Pine contending that there was no valid contract in place for services provided by nTelos when submitting the Form 471 for Funding Year 2006. Lonesome Pine had a valid, signed and dated contract in place. The Commission should overturn this decision and remand this funding request to the Administrator for processing and funding commitment.

With this appeal we further ask the Commission to clarify its position on what constitutes a legally binding agreement for the purpose of satisfying its contract requirements for the E-Rate discount program. Lonesome Pine believes the intent of a single statement in a sweeping Commission Order was not meant to drastically alter contract requirements for the E-Rate program and surpass contract requirements of states, localities and private institutions.

**Background**

Lonesome Pine Regional Library serves Wise, Dickenson, Lee and Scott Counties and the City of Norton in the heart of Appalachia in far southwestern Virginia. While rich in history, pristine environment, and diverse population, the region is gripped with relentlessly high unemployment. Consequently, the E-Rate discount for the library system is a staggering 80 percent – among the highest in the nation for libraries.

Throughout the decade-long history of the E-Rate program and thanks to substantial discounts on eligible services, Lonesome Pine has been able to provide residents of the region connectivity to Internet resources and superior service in general. Without question, the E-Rate program, enacted through the Telecommunications Act of 1996, was meant to benefit entities such as ourselves.

Lonesome Pine applied for E-Rate discounts for Funding Year 2006 for Internet Access via T1 data lines provided by nTelos. Lonesome Pine posted a Form 470 listing the types of services desired. After the Form 470 had been posted for the requisite 28 days, nTelos was selected to provide services. In a fax dated February 7, 2005 nTelos provided a contract for Lonesome Pine to sign. Amy Bond, Library Director, signed the contract and hand dated the signature February 8, 2005. The contract was also signed by Wayne Cruise from nTelos. On the nTelos contract, there is no space for a date for the nTelos representative. From the contract, it is not clear when nTelos signed. It is possible both signatures were affixed to the contract on the same date. It is also possible the contract was signed by nTelos on February 7, the time stamp date on the fax. If indeed the contract was signed by nTelos on February 7, the fax time stamp would represent the second date required under the Administrator's interpretation of Commission regulation.

During PIA review, the Administrator requested a copy of the contract. After review, the Administrator denied funding in correspondence dated September 19, 2006. Lonesome Pine appealed the decision to the Administrator and was denied funding by the Administrator in correspondence dated January 16, 2007.

## **Discussion**

Commission rules require a contract be in place before the Form 471 is filed.<sup>1</sup> On the Administrator's website, this rule is elaborated upon by defining a contract as a legally binding agreement as defined by relevant state law.<sup>2</sup> Virginia procurement laws do not require a contract to have two dates and two signatures. A sample contract on the "Electronic Virginia (EVA) Web site (Attachment A) has space for only one date. EVA is the primary procurement vehicle for the Commonwealth.

Lonesome Pine had a dated contract signed by both parties. Under Virginia procurement law, this is recognized as a valid contract for procuring goods and services. The contract was executed after a Form 470 was posted by Lonesome Pine and at least 28 days had passed. The contract was signed prior to the closing of the year 2006 Form 471 filing window as exhibited by the date listed on the contract document itself and is included here as Attachment B.

Lonesome Pine believes the Administrator has misinterpreted Commission orders with the "two-date two-signature" requirement. Indeed, language in the Administrator's denial of the Lonesome Pine's initial appeal to the Administrator points to a very weak argument for the Administrator's requirement for two dates and two signatures. In language contained in the denial of our appeal, the Administrator provides two specific

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<sup>1</sup> 47 CFR § 54.504 (c)

<sup>2</sup> See USAC's website at [www.universalservice.org/sl/applicants/step04/contract-guidance.aspx](http://www.universalservice.org/sl/applicants/step04/contract-guidance.aspx)

cites requiring applicants to have a signed contract in place (47 CFR § 54.504 (c) and FCC Form 471 instructions). In both referenced cites, the requirement is for a signed contract. There is no mention of date at all. Conversely, the Administrator requirement for two dates and two signatures is a mere statement in the 48<sup>th</sup> paragraph of the Fifth Order on Reconsideration under CC Docket Number 02-6. The Order has no corresponding Ordering Clauses or no other emphasis other than its simple mention. Lonesome Pine contends the intent of this reference is to admonish applicants to maintain copies of contracts and other items mentioned in the section rather than to enact sweeping and stringent new requirements of applicants.

In Gayville-Volin the Commission ruled that a contract containing a single signature could be acceptable as a binding agreement.<sup>3</sup> While the Commission did not specifically overturn the Administrator's two-date, two-signature policy, it conceded a single date on a contract could satisfy the Commission requirement to have a legally binding agreement in place prior to filing the Form 471.

The Commission has deferred to state law for a number of E-Rate policies including definition of school, pre-kindergarten, adult education, juvenile justice eligibility, and until the Administrator's reading of the Fifth Order on Reconsideration, state contract law. We ask the Commission to return Administrator evaluation of contracts to state statute.

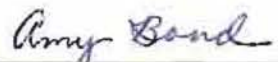
## **Conclusion**

Lonesome Pine procured E-Rate eligible services here under appeal in accordance with Commission regulations, Administrator policies, laws of the Commonwealth of Virginia and procurement policies of Lonesome Pine Regional Library. The contract in question was signed by both parties and dated. The contract has two dates.

The Administrator has misinterpreted Commission regulation and overstepped its authority by requiring contracts to be signed by both parties and dated by both parties. The Commission has repeatedly deferred to state law on procurement issues. We ask the Commission to overturn this unfortunate decision and require the Administrator to restore funding for services here under appeal.

Alternatively, and in the public interest, we ask the Commission to waive any minor rule violation and direct the Administrator to approve discounts for this service. There was absolutely no waste, fraud, or program abuse associated with this discount request. The discount rate for Lonesome Pine reflects a very high regional poverty level that counts on discounted services to meet basic needs.

Respectfully submitted this 20th day of February, 2007,

Amy Bond   
Director, Lonesome Pine Regional Library  
124 Library Road SW Wise, VA 24293

[abond@lprlibrary.org](mailto:abond@lprlibrary.org)  
(276) 328-8325 (phone)  
(276) 328-1739 (fax)

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<sup>3</sup> Gayville-Volin School District 63-1, DA 06-1655, released August 18, 2006

**COMMONWEALTH OF VIRGINIA**  
**STANDARD CONTRACT**  
**(for use with Competitively Negotiated contracts only)**

Contract Number: \_\_\_\_\_

This contract entered into this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_,  
by \_\_\_\_\_ hereinafter called the "Contractor"  
and Commonwealth of Virginia, \_\_\_\_\_ (Department,  
Agency, Division) called the "Purchasing Agency."

WITNESSETH that the Contractor and the Purchasing Agency, in consideration of the mutual covenants, promises and agreements herein contained, agree as follows:

SCOPE OF CONTRACT: The Contractor shall provide the goods/services to the Purchasing Agency as set forth in the Contract Documents.

PERIOD OF PERFORMANCE: From \_\_\_\_\_ through  
\_\_\_\_\_.

The contract documents shall consist of:

- (1) This signed form;
- (2) The following portions of the Request for Proposal dated \_\_\_\_\_:
  - (a) The Statement of Needs,
  - (b) The General Terms and Conditions,
  - (c) The Special Terms and Conditions together with any negotiated modifications of those Special Conditions;

Attachment \_\_\_\_\_, Date \_\_\_\_\_

Attachment \_\_\_\_\_, Date \_\_\_\_\_

- (3) The Contractor's Proposal dated \_\_\_\_\_ and the following negotiated modifications to the Proposal, all of which documents are incorporated herein.

IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed intending to be bound thereby.

CONTRACTOR:

PURCHASING AGENCY:

By: \_\_\_\_\_ By: \_\_\_\_\_

Title: \_\_\_\_\_ Title: \_\_\_\_\_

**Note:** This public body does not discriminate against faith-based organizations in accordance with the *Code of Virginia*, § 2.2-4343.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.



## T1- Contract

1114 Shenandoah Village Drive - Waynesboro, VA 22980

## Billing Information

Customer Name: LONESOME PINE REGIONAL LIBRARY

First

MI

Last

Daytime Contact Number: 276-328-8328

Contact Name: TERESA BLANSETT

For Accounts In Business Name Only

Physical Address: 124 LIBRARY RD. SW

Cannot be PO Box. Must be physical Address

City, State, Zip: WISE VA 24293

Billing Address: 124 LIBRARY RD. SW

City, State, Zip: WISE VA 24293

Sales Engineering Project: YES

Yes

Transport Charge (DS1, T1, etc.)

Type of Circuit: T-1 INTERNET 1.5MBPS

Number of Circuits: 1

Cost Per Circuit: \$

Term (MTM, 1Yr., 3 Yr., 5 Yr.): 3

Total Monthly Cost: \$1070.00

## DID Block Information

No. of DID Blocks:

Cost per Block:

Total Block Cost:

## PRI Service Information

Number of PRIs:

Term (MTM, 1Yr., 3 Yr., 5 Yr.):

Charge Per PRI:

Total PRI Cost:

Number of Channels:

Total Channel Charge (\$2.00 per channel):

Total Monthly Cost:

## Caller ID Information

Number of Caller ID:

Cost Per ID:

Total Caller ID Cost:

## Total Monthly Fee and One Time Fee

Total Monthly Fee:

One Time Fee:

\$ 1,070.00

\$ 296.00

## Channelized T1 Information

Term (MTM, 1Yr., 3 Yr., 5 Yr.):

Number of Lines:

Per Line/Trunk Charge:

Total Monthly Cost:

## T1-PRI Terms and Conditions

Customer agrees to remain a subscriber of NTELOS for the service term stated above. If Customer disconnects for any reason or is disconnected for non-payment of service, Customer agrees to pay NTELOS the following termination reimbursement charges and applicable taxes. If contract is terminated prior to the end of the commitment period, the customer disconnects or is disconnected for non-payment of service, the customer is NTELOS the early termination reimbursement charges and applicable taxes determined by the difference between the month to month price and term price times the number of months in service. If the customer disconnects before one year, the waived installation fees equal to the month to month price should be recovered in full.

INSTALL 7-1-2005  
THIS MAKE (2) T-1 1.5mbps  
INTERNET. WITH NTELOS AT  
THE PHYSICAL ADDRESS ABOVE.

## Signatures

Customer's Signature:

Print Customer's Name:

Date:

Account Executive's Signature:

WAYNE CRUISE

Print Account Executive's Name:

## NOTES:

Customer Care (800) 232-0457  
(Reps)

2nd T-1 Internet to be installed 7-1-2005



Attachment B



## T1 Contract

## Billing Information

Customer Name: LONESOME PINE REGIONAL LIBRARY

First

M

Last

Daytime Contact Number: 278-328-8328Contact Name: TERESA BLANSETT

For Accounts in Business Hours Only

Physical Address: 124 LIBRARY RD. SW

Cannot be PO Box. Must be physical Address

City, State, Zip: WISE VA 24293Billing Address: 124 LIBRARY RD. SWCity, State, Zip: WISE VA 24293

Sales Engineering Project:

YES

Yes

Transport Charge (DS1, T1, etc.)

Type of Circuit: T-1 INTERNET 1.5MBPSNumber of Circuits: 1

Cost Per Circuit:

\$

Term (MTM, 1Yr., 3 Yr., 5 Yr.): 3

Total Monthly Cost:

\$ 1,090.00

## DID Block Information

No. of DID Blocks:

Cost per Block:

Total Block Cost:

## PRI Service Information

Number of PRIs:

Term (MTM, 1Yr., 3 Yr., 5 Yr.): N/A

Charge Per PRI:

Total PRI Cost:

\$

Number of Channels:

Total Channel Charge (\$2.00 per channel):

\$

Total Monthly Cost:

\$

## Caller ID Information

Number of Caller ID:

Cost Per ID:

Total Caller ID Cost:

\$

## Channelized T1 Information

Term (MTM, 1Yr., 3 Yr., 5 Yr.): N/A

Number of Lines:

Per Line/Trunk Charge:

Total Monthly Cost:

\$

## T1-PRI Terms and Conditions

Customer agrees to remain a subscriber of NTELOS for the service term stated above. If Customer disconnects for any reason or is disconnected for non-payment of service, Customer agrees to pay NTELOS the following termination reimbursement charges and applicable taxes. If contract is terminated prior to the end of the commitment period, the customer shall remain liable for the termination reimbursement charges and applicable taxes determined by the difference between the month to month price and 1 term price times the number of months in service. If the customer disconnects before one year, the waived installation fee equal to the month to month price should be recovered in full.

## Total Monthly Fee and One Time Fee

Total Monthly Fee:

\$

1,090.00

One Time Fee:

\$

295.00

## Signatures

Print Customer's Name:

Date

Account Executive's Signature:

WAYNE CRUISE

Print Account Executive's Name:

## NOTES:

Customer Care 11800/252-0657 (Rapid)

2004 Wireline Contract(1)

T1-PRI Contract

☐ PM

Mgr Approval:

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Version 02.00

★ 1st + 1 - Internet Contract Installed 7-1-04

Installed 7-1-2004  
1st + 1 - Internet  
① The Physical Address Above